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The Preservation of
Constitutional Government.
Speech of Hon. Abram S. Hewitt.





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[FROM CONGRESSIONAL RECORD.]

Preservation of Constitutional Government.

SPEECH OF HON. ABRAM S. HEWITT,

OF NEW YORK,

ON THE BILL PROVIDING FOR A

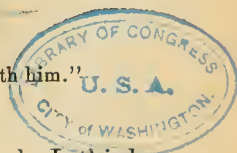
Great Commission on Counting the Presidential Votes,

DELIVERED IN

THE UNITED STATES HOUSE OF REPRESENTATIVES,

JANUARY 25th, 1877.

25-7
"Agree with thine adversary quickly while thou art in the way with him."



Mr. HEWITT, of New York. Mr. Speaker, although I think that this bill transcends in importance any measure which is likely to come before Congress during the present generation of men, if I were to consult my own inclinations I would be quite content to refrain from taking any part in the debate, and to let the question be decided upon its intrinsic merits, with the clear light which has been shed upon it by the conclusive arguments of the members of the committee who have preceded me. But, unhappily, circumstances which I never could have anticipated, have placed me in such a position with reference to one of the great parties of the country as to give to 4,000,000 or 5,000,000 of voters the right to ask me a question which I am bound to answer, and I may as well admit that they are exercising this right with unbounded liberty by post and by telegraph. They have acquired this right because I have assured them of my belief that the election in November last resulted in the choice of the democratic candidates for President and Vice-President. As nothing has occurred since, which could otherwise than strengthen this conviction, as well in their minds as in my own, they are naturally led to ask me why, as a member of the joint committee which has reported this bill I have given my assent to a measure which departs from the "ancient ways" by which the result of twenty-two presidential elections have been determined, and which, if adhered to, would surely result in the formal declaration of the election our candidates. This question I propose to answer fully, freely, and without any reserve whatever.

The main opposition we had to meet in the late election was the influence of the Administration, exerted in the organization of its partisans, in the use of patronage, in the control of the personal services of the office-holders, in the levying of assessments, in the direction of the press, and in the countless other channels, which a party long in power knows well how to use. After their defeat in November there still remained intact the organization, and the powerful will to direct it to its own preservation and perpetuation. The electoral votes necessary to insure the success of its candidates were claimed without delay, and the means taken to have them counted through the agency of State administrations and returning boards under the control of the republican leaders in Florida and Louisiana. With the disputed vote in Oregon, 185 votes were thus nominally secured for Hayes and Wheeler, with *prima facie* certificates more or less regular to sustain the claim.

I only remained to find some means by which these votes could be counted and declared under the existing statute regulating the time and manner of opening the certificates and declaring the result. The plan for effecting this object was speedily agreed upon. The twenty-second joint rule, under which the results of the three last presidential elections had been ascertained and declared, was repealed by the Senate. This deprived the House of the right previously existing to throw out the vote of a State by an objection to its validity. Thus the votes of Florida and Louisiana, no matter how fraudulent might be the returns and worthless the certificates based thereon, were made to secure to the republican candidate. But in order that they might be counted at all, it became indispensable to assert the claim of the Vice-President not merely to open, but to count the votes, first deciding upon their validity, in all cases where there were duplicate certificates or disputed elections. This claim was therefore promptly set up, and during this week has been boldly maintained in the Senate Chamber by the men who have been most conspicuous in the management of the late election.

The scheme was thus complete for counting Tilden out, and counting Hayes in. I became satisfied that unless this scheme should meet with opposition from the more conservative members of the republican party, it would be executed; that the President of the Senate *would* count the votes and declare the result; and that the President of the United States would deliver up his high office to the successor so declared, and by the use of the troops already concentrated in Washington see that he was duly inaugurated.

Of course the House of Representatives would not be silent and passive spectators of this programme. They would insist upon their constitutional right to participate in the counting of the vote, the ascertainment and declaration of the result. They would count the votes of Florida and Louisiana for Tilden and Hendricks, and would record the result on the Journal and make the formal declaration of their election to the offices of President and Vice-President. This duty made incumbent upon them by the Constitution and their

oaths of office they could not, from any fear of the consequences, refuse to perform.

Thus would result two Presidents and two Vice-Presidents claiming each to be lawfully chosen, and demanding recognition at home and abroad.

The logical result of such a state of affairs is civil war, or possibly, but hardly in the light of contemporary experience among our neighbors, one or the other party might content himself by asserting his rights upon paper, and be satisfied with the empty honors of a *pronunciamento*. But such a course is scarcely to be expected from a race which carried on the wars of the Parliament, which executed Charles I, deposed James II, threw off its allegiance to George III, and preserved the Union against attempted secession, at a countless cost of blood and treasure. But if acquiescence were possible, it would not be peace, prosperity, and plenty for the people. Usurpation never brings contentment or confidence. The spring of industry would be dried up and the fountains of capital cease to flow. But, what would be worse, the respect for the Constitution, essential to free government, would be destroyed in the minds of more than half the voters of the country. It would be generally accepted that usurpation was to be the law of succession, and by common consent we would be glad to take refuge in military despotism as the only panacea "for all our woes." The experiment of free government would thus utterly fail at the close of the first century of its existence, thus confirming the experience of all history as to the ultimate decadence of free nations.

But if the usurpation were not acquiesced in, civil war with all its horrors would ensue, and the strife would penetrate into every household in the land. The end no man could foresee, save the refuge sooner or later in the all-embracing guardianship of an imperial ruler.

In either event, then, the objects which the democratic party had most at heart in the recent struggle would be utterly lost. These objects were not the election of any man to the Presidency, or the establishment of any special financial policy as contrasted with that of our opponent. In fact the platforms of the two parties were scarcely distinguishable from each other in principle. What we aimed to secure was—

First. Reform in the administration by which the *personal* character it had of late years assumed should cease to exist, and public offices filled by men who could comprehend and act upon the old-fashioned principle, which has been better formulated in the constitution of Massachusetts than elsewhere within my knowledge, that "government is instituted not for the profit, honor, or private interest of any one man, family, or class of men."

The second and still more important objects, underlying indeed all other motives, was to preserve the Constitution from being destroyed by the use of the military power in the elections, or in the maintenance in the several States of government, not resting upon the will of the people.

A series of statutes, doubtless the inevitable fruit of the war of the secession had been enacted, under color of which the Federal authority had been used in a manner which excited the alarm, and called for the condemnation of patriotic and thoughtful men without regard to party. Especially in the State of Louisiana in 1872 had been enacted a scene unprecedented in our history, filling the minds of men with fear for the permanence of constitutional government. By the order of a drunken judge, signed in the dark hours of the night, away from the domicile of justice, the lawful government of a sovereign State had been rudely overturned, and the usurping power which had taken its place was sustained by the arm of Federal power, acting through files of soldiers invading the halls of legislation, and dragging from their seats, the representatives of a people to whom a republican form of government had been guaranteed by the Constitution of the United States.

The pretended and fraudulent government thus created had been kept in its place only by the military power of the Federal Government; and when once overthrown by a sudden breath of popular discontent, it had been promptly restored by the orders of the President of the United States, through his Secretary of War, the military and not the judicial branch of the Government. Against this violation of the Constitution the best men of all parties did not hesitate to protest, and yet, when the late election came to pass, this fabricated government still existed in Louisiana, controlling all the machinery of justice, of legislation, and of election. Its returning board possessed an odor peculiarly its own, with which every voter in the United States was familiar. Many of these who had heretofore acted with the republican party perceived, that if this practice of military interference should become incorporated, by the tacit consent of the people into the permanent fabric of the government, the Constitution would be destroyed, the principle of liberty undermined, and the way prepared for the early establishment of a military despotism. Hence, reluctantly, but moved by convictions of conscience, they joined themselves to the democratic party, and engaged, as they believed in a death struggle for the preservation of their rights and liberties.

Now these rights and liberties, for which we had made so gallant and successful a fight, would equally perish whether a President should come in by usurpation, even if acquiesced in by the people, or whether, if not acquiesced in, civil war should be the result.

There was no escape from this deplorable position except by agreement between the conservative and patriotic men of both parties, who prefer the good of the country to the success of party, upon some method by which the incoming President should be accepted by all parties as the lawful Executive of the General Government. For one, partisan as from my position I was supposed to be, but patriotic as I hope henceforth to be regarded, I deemed it my plain duty to labor zealously toward the attainment of some just and constitutional plan, whereby but one President should be declared,

and by a title which all citizens would respect, and no considerable number of voters would dispute. It was essential to the formation of such a plan that it should be constitutional; that it should be so absolutely fair between the two political parties, that neither could possibly claim or take any advantage by reason of its provisions; that the scales of judgment should be so evenly poised that the dust in the balance should incline the beam. Such a plan, in my judgment, the committee were able to agree upon and have presented to Congress, and this plan has already received the sanction of the Senate by a majority so overwhelming as to indicate its triumphant passage through this House. No man can predict who will become President by virtue of its operation, but all men can predict that it will be the man who is *lawfully* entitled to be President. If the law should violate the equity of the case, it is ground for the amendment of the law, but not of rebellion against its decrees.

The proposed plan of settlement, for it is a measure of settlement and not of compromise, provides for a commission on which each branch of Congress and each political party is equally represented by five of their members to be chosen *viva voce* and not by the presiding officer. To these are added five men who by their elevated position and long service in the Supreme Court of the land have gained the respect and absolute confidence of the country. They have been long removed from the influence of party politics, and, holding life offices, are above all the temptations and blandishments of power. For them, then, there is neither reward nor higher honors. They have already reached the summit of human preferment, for a great and just judge is the glory of humanity. To no men in history has ever been confided a greater trust than this bill proposes to confer, the duty of deciding between conflicting parties as to who shall be the ruler of forty-five millions of free people. It is impossible to conceive that such a trust shall not be faithfully discharged, with the eyes not only of this people, but of the whole civilized globe fixed upon them, and the verdict of history to be recorded on their action. Trusting to them as we do habitually our lives and fortunes, surely no man can doubt that this great duty will be performed with an eye solely to the glory of God and the good of His people.

On the subject of the constitutionality of this measure it does not become me as a layman to say more than that I am bound to accept the opinion of the twelve lawyers with whom I have been associated on the committee, some of them among the most eminent jurists in the country, that the bill is not unconstitutional.

On the subject of the composition of the committee it is however proper for me to say that I found myself on a committee with thirteen lawyers. As a matter of course, it was to be expected that it would be very difficult for one layman to keep straight thirteen lawyers, each having his own construction of the provisions of the Constitution on this subject. [Laughter.] I did what I could. I labored without ceasing to keep their minds in the right direction ;

and they assure me—all but one—that I succeeded, and that the plan upon which we have agreed is constitutional.

But even if no express warrant for it could be found in that instrument, it is clearly within its spirit, which we have so often invoked in times of peril, as when we made the Louisiana purchase; when we preserved the Union against the heresy of secession; and when we adopted the policy of reconstruction, rendered necessary by occurrences which the Constitution had never contemplated. That instrument declares that it was established “to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.” Surely none of these ends will be gained, and they will all irretrievably perish, if by neglect of Congress the country is allowed to drift into civil war, or be ruled for four years by a President who, by a majority of the people, will be regarded as a usurper, when, by the establishment of a fair tribunal, the questions in controversy can be settled to the satisfaction of the great mass of the people of this country.

There are men, it is true, who think that the Constitution was not established for these beneficent purposes, so much as to give occasion for casuists to draw nice distinctions and for the display of the powers of the human intellect, just as a great German physician frankly thanks divine Providence for the existence of disease, because it enables man to develop his marvelous skill in effecting cures. Doubtless when the last trump is sounded there will be found men splitting hairs, unconscious that the day of judgment is at hand.

So far as one can judge from public utterances, the proposed measure of settlement is sustained by the country at large and opposed only by the office-holding and office-seeking interests. A hundred thousand place-holders *in esse* and an equal number of place-hunters *in posse* are busily attacking this bill and its authors, and for the same reason as did the Ephesian “worker in copper” the early Christians, “it threatens to spoil their trade.” Whatever be the real motives of this class, they shoot the arrows of opposition from behind the shield of the Constitution. Admitting the gravity of the situation, involving perchance war and the very existence of the Republic, they shake their frowning heads and declare “nothing can be done; the Constitution forbids.”

A story is told of a young Oxonian, that he stood on the river’s bank and saw a fellow-student drown without making an effort to save him, because a formal introduction had not passed between them. Shall a ship be allowed to drift upon the rocks because the right man does not happen to be on deck to give the order to “port the helm?” Are constitutions intended to be ends or means, means for the preservation of liberty and order? The framers of the Constitution of the United States drew in bold lines the great principles and framework of Government. Sensible men, they left details to be worked out, as occasion might arise, in the light of necessity and

experience, by the legislative department. They did not cut out a tight, inelastic garment to fit the five millions of people strung along the Atlantic slope, and intend to bind the limbs and smother forty millions of their descendants, spread over a continent.

Unconstitutional! Why, the very spirit and essence, the pineal gland of the Constitution is in the proposed measure. The old Saxon love of liberty and order is there. It contains the genius of Magna Charta, the great petition of right, the settlement of 1688, the Declaration of Independence. It substitutes law and order and right for strife, anarchy, and wrong. It means that whoever shall hold the executive office, shall hold it by the consent, and with the support of all the people of this land. It means that the wheels of business shall again be put in motion, and the welcome hum of vast industries shall again be heard, that the waiting laborer shall have work and his wife and children bread. It means the supremacy of the civil to the military power, teaching the needed lesson that the soldier is the servant, and not the master, of the people, who pay his wages, the drone in the human hive, to be dispensed with when he becomes troublesome to the workers. It means the preservation of the autonomy of the States, and the right of the people therein to regulate and administer their local affairs, without interference from any quarter. Lastly, it means oblivion of all the bitterness of the past, security for the present, hope for the future.

All this and more is contained in the bill which the House committee has reported unanimously, and to urge against it mere technical constitutional objections, is to invite men to bind about their heads copies of that instrument, so as to compress their skulls into the shape, and reduce their intellect to the measure of those of a Flat-head Indian.

One more objection and I am done. It is alleged on the republican side that it is a measure to make Tilden President, and on the democratic side that it is a measure to make Hayes President. Can a greater tribute be paid to the absolute fairness of this legislation? For myself I frankly declare that I do not know, and have not allowed myself to speculate upon the result, except that both candidates cannot come in; that the one who has been lawfully elected will be inaugurated, and that, while the dangers of civil war will thus be averted, the Constitution, and the respect for it in the popular mind, which is essential to the preservation of that great charter of our rights and liberties, will not be weakened or destroyed.

The passage of this measure of peace and conciliation will fitly close the great events of the first century of the Republic, and inaugurate that era of peace and prosperity which, if our free institutions can be maintained, will mark the second century of our existence as the most marvelous period in the history of the human race. Let it be remembered that the establishment of our Government was contemporaneous with the birth of chemistry, the invention of the steam-engine, and the declaration of Adam Smith of these principles of exchange between nations, which have revolutionized the commerce

of the world, and made it possible for mankind to realize hereafter the doctrines of "liberty, equality, and fraternity" for which enthusiasts have dreamed, and men have waited through the weary ages, crying out of the depths "How long, O Lord, how long?" With peace and freedom assured, the great problem of the relations of capital and labor, will find its solution in a land which has been endowed with a wealth of resources beyond the wildest dreams of avarice, whereof the proper development and the just distribution will leave no man, who is willing to labor, without the means of living a life worthy of the high destiny for which humanity was intended by the Great Author of its being. To this great end, the men who record their votes in favor of this measure will surely contribute, and be remembered, with everlasting gratitude, as statesmen who preferred country to party, order to anarchy, constitutional government to civil strife, and steady progress in civilization to the premature decay and needless destruction of the only nation with whom rests, so far as human judgment can see, the present hope of the oppressed sons of toil, from whatever clime they may turn their weary gaze to this land of promise, with the unceasing prayer, springing from countless souls, "Peace be within thy walls, and prosperity within thy palaces."

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